S T A T E O F N E W Y O R K

5308--A

2011-2012 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. GOTTFRIED, GUNTHER, PAULIN, LIFTON, LUPARDO, ENGLEBRIGHT, GABRYSZAK, HOOPER, N. RIVERA, JAFFEE, SCARBOROUGH, ROSENTHAL, CAHILL, PRETLOW, ORTIZ, BENEDETTO, CASTRO, GIBSON, BRONSON, RUSSELL, BRINDISI -- Multi-Sponsored by -- M. of A. BRENNAN, CROUCH, CUSICK, GALEF, HEVESI, LATIMER, LAVINE, LENTOL, PEOPLES-STOKES, REILLY -- read once and referred to the Committee on Higher Education -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the education law, in relation to establishing the nurse practitioners modernization act; and providing for the repeal of such provisions upon the expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "nurse practitioners modernization act".

S 2. Subdivision 3 of section 6902 of the education law, as added by chapter 257 of the laws of 1988, is amended to read as follows:

3. (a) (I) The practice of registered professional nursing by a nurse practitioner, certified under section six thousand nine hundred ten of this article AND PRACTICING FOR FEWER THAN THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS, may include the diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice, in collaboration with a licensed physician qualified to collaborate in the specialty involved, provided such services are performed in accordance with a written practice agreement and written practice protocols. The written practice agreement shall include explicit provisions for the resolution of any disagreement between the collaborating physician and the nurse practitioner regarding a matter of diagnosis or treatment that is within the scope of practice of both. To the extent the practice agreement does not

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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so provide, then the collaborating physician's diagnosis or treatment shall prevail. IN THE EVENT THAT (I) AN EXISTING WRITTEN PRACTICE AGREEMENT WITH A COLLABORATING PHYSICIAN TERMINATES AS A RESULT OF THE COLLABORATING PHYSICIAN MOVING, RETIRING, NO LONGER NEEDING THE SERVICES OF THE NURSE PRACTITIONER, NO LONGER BEING QUALIFIED TO PRACTICE OR UPON HIS OR HER DEATH AND THE NURSE PRACTITIONER IS UNABLE TO ENTER INTO A NEW WRITTEN PRACTICE AGREEMENT WITH ANOTHER COLLABORATING PHYSICIAN; OR IF (II) A NURSE PRACTITIONER OBTAINS APPROVAL BY THE DEPARTMENT BASED ON A DEMONSTRATION TO THE DEPARTMENT THAT AN EXISTING WRITTEN PRACTICE AGREEMENT WAS TERMINATED DUE TO NO FAULT ON THE PART OF THE NURSE PRACTITIONER, AND THAT THE NURSE PRACTITIONER IS UNABLE TO ENTER INTO A NEW WRITTEN PRACTICE AGREEMENT WITHIN ANOTHER COLLABORATING PHYSICIAN FOLLOWING A SHOWING OF GOOD FAITH EFFORT; THEN: SUCH NURSE PRACTITIONER MAY CONTINUE TO PRACTICE PURSUANT TO THIS PARAGRAPH WITHIN A SPECIALTY AREA OF PRACTICE FOR A PERIOD OF UP TO SIX MONTHS, IN COLLABORATION WITH A NURSE PRACTITIONER WHO HAS BEEN CERTIFIED UNDER SECTION SIX THOUSAND NINE HUNDRED TEN OF THIS ARTICLE, WHO HAS BEEN PRACTICING FOR MORE THAN THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS AND WHO IS QUALIFIED TO COLLABORATE IN THE SPECIALTY INVOLVED, PROVIDED THAT SERVICES ARE PERFORMED IN ACCORDANCE WITH A WRITTEN PRACTICE AGREEMENT AND WRITTEN PRACTICE PROTOCOLS; SUCH SIX MONTH TIME PERIOD FOR COLLABORATION BETWEEN NURSE PRACTITIONERS MAY BE EXTENDED FOR A PERIOD OF TIME NOT TO EXCEED AN ADDITIONAL SIX MONTHS UPON A SHOWING OF GOOD CAUSE SUBJECT TO THE APPROVAL OF THE DEPARTMENT.

[(b)] (II) Prescriptions for drugs, devices and immunizing agents may be issued by a nurse practitioner, under this [subdivision] PARAGRAPH and section six thousand nine hundred ten of this article, in accordance with the practice agreement and practice protocols. The nurse practitioner shall obtain a certificate from the department upon successfully completing a program including an appropriate pharmacology component, or its equivalent, as established by the commissioner's regulations, prior to prescribing under this [subdivision] PARAGRAPH. The certificate issued under section six thousand nine hundred ten of this article shall state whether the nurse practitioner has successfully completed such a program or equivalent and is authorized to prescribe under this [subdivision] PARAGRAPH.

[(c)] (III) Each practice agreement shall provide for patient records review by the collaborating physician OR, WHERE APPLICABLE, THE COLLABORATING NURSE PRACTITIONER, in a timely fashion but in no event less often than every three months. The names of the nurse practitioner and the collaborating physician OR, WHERE APPLICABLE, THE COLLABORATING NURSE PRACTITIONER shall be clearly posted in the practice setting of the nurse practitioner.

[(d)] (IV) The practice protocol shall reflect current accepted medical and nursing practice, OR WHERE APPLICABLE THE CURRENT ACCEPTED NURSING PRACTICE. The protocols shall be filed with the department within ninety days of the commencement of the practice and may be updated periodically. The commissioner shall make regulations establishing the procedure for the review of protocols and the disposition of any issues arising from such review.

[(e)] (V) No physician OR, WHERE APPLICABLE, NURSE PRACTITIONER, shall enter into practice agreements with more than four nurse practitioners who are not located on the same physical premises as the collaborating physician OR COLLABORATING NURSE PRACTITIONER.

(B) (I) THE PRACTICE OF REGISTERED PROFESSIONAL NURSING BY A NURSE PRACTITIONER, CERTIFIED UNDER SECTION SIX THOUSAND NINE HUNDRED TEN OF

THIS ARTICLE AND PRACTICING FOR MORE THAN THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS, MAY INCLUDE THE DIAGNOSIS OF ILLNESS AND PHYSICAL CONDITIONS AND THE PERFORMANCE OF THERAPEUTIC AND CORRECTIVE MEASURES WITHIN A SPECIALTY AREA OF PRACTICE.

(II) PRESCRIPTIONS FOR DRUGS, DEVICES AND IMMUNIZING AGENTS MAY BE ISSUED BY A NURSE PRACTITIONER, UNDER THIS PARAGRAPH AND SECTION SIX THOUSAND NINE HUNDRED TEN OF THIS ARTICLE. THE NURSE PRACTITIONER SHALL OBTAIN A CERTIFICATE FROM THE DEPARTMENT UPON SUCCESSFULLY COMPLETING A PROGRAM INCLUDING AN APPROPRIATE PHARMACOLOGY COMPONENT, OR ITS EQUIVALENT, AS ESTABLISHED BY THE COMMISSIONER'S REGULATIONS, PRIOR TO PRESCRIBING UNDER THIS PARAGRAPH; PROVIDED THAT ANY CERTIFICATE ISSUED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL ALSO SATISFY THE REQUIREMENTS OF THIS SUBPARAGRAPH. THE CERTIFICATE ISSUED UNDER SECTION SIX THOUSAND NINE HUNDRED TEN OF THIS ARTICLE SHALL STATE WHETHER THE NURSE PRACTITIONER HAS SUCCESSFULLY COMPLETED SUCH A PROGRAM OR EQUIVALENT AND IS AUTHORIZED TO PRESCRIBE UNDER THIS PARAGRAPH.

(III) A NURSE PRACTITIONER, CERTIFIED UNDER SECTION SIX THOUSAND NINE HUNDRED TEN OF THIS ARTICLE AND PRACTICING FOR MORE THAN THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS, SHALL EITHER HAVE A WRITTEN PRACTICE AGREEMENT AND WRITTEN PRACTICE PROTOCOLS WITH A LICENSED PHYSICIAN IN CONFORMITY WITH THE REQUIREMENTS SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION OR SHALL HAVE COLLABORATIVE RELATIONSHIPS WITH ONE OR MORE LICENSED PHYSICIANS QUALIFIED TO COLLABORATE IN THE SPECIALTY INVOLVED OR A HOSPITAL, LICENSED UNDER ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, THAT PROVIDES SERVICES THROUGH LICENSED PHYSICIANS HAVING PRIVILEGES AT SUCH INSTITUTION AND QUALIFIED TO COLLABORATE IN THE SPECIALTY INVOLVED. SUCH COLLABORATIVE RELATIONSHIP SHALL INCLUDE WRITTEN GUIDELINES FOR PRACTICE THAT PROVIDE FOR THE CRITERIA TO BE USED REGARDING CONSULTATION, INCLUDING METHODS AND FREQUENCY OF HOW CONSULTATION SHALL BE PROVIDED, COLLABORATIVE MANAGEMENT AND REFERRAL, INCLUDING EMERGENCY REFERRAL PLANS, TO ADDRESS THE HEALTH STATUS AND RISKS OF PATIENTS. DOCUMENTATION OF SUCH COLLABORATIVE RELATIONSHIPS SHALL BE MAINTAINED BY THE NURSE PRACTITIONER AND THE NURSE PRACTITIONER SHALL MAKE INFORMATION ABOUT SUCH COLLABORATIVE RELATIONSHIPS AVAILABLE TO HIS OR HER PATIENTS UPON REQUEST. FAILURE TO COMPLY WITH THE REQUIREMENTS FOUND IN THIS SUBPARAGRAPH SHALL BE SUBJECT TO PROFESSIONAL MISCONDUCT PROVISIONS AS SET FORTH IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE.

(IV) THE WRITTEN GUIDELINES FOR PRACTICE SHALL REFLECT CURRENT ACCEPTED MEDICAL AND NURSING PRACTICE AND SHALL BE FILED WITH THE DEPARTMENT, ALONG WITH AN ATTESTATION BY THE NURSE PRACTITIONER IDENTIFYING THE PHYSICIAN, PHYSICIANS, OR HOSPITAL THAT HAVE AGREED TO PARTICIPATE IN THE COLLABORATIVE RELATIONSHIP PURSUANT TO SUCH WRITTEN GUIDELINES, WITHIN NINETY DAYS OF THE COMMENCEMENT OF THE PRACTICE AND MAY BE UPDATED PERIODICALLY. THE COMMISSIONER SHALL MAKE REGULATIONS ESTABLISHING THE PROCEDURES FOR THE REVIEW OF WRITTEN GUIDELINES AND THE DISPOSITION OF ANY ISSUES ARISING FROM SUCH REVIEW.

[(f)] (C) Nothing in this subdivision shall be deemed to limit or diminish the practice of the profession of nursing as a registered professional nurse under this article or any other law, rule, regulation or certification, nor to deny any registered professional nurse the right to do any act or engage in any practice authorized by this article or any other law, rule, regulation or certification.

[(g)] (D) The provisions of this subdivision shall not apply to any activity authorized, pursuant to statute, rule or regulation, to be

performed by a registered professional nurse in a hospital as defined in article twenty-eight of the public health law.

(E) THE DEPARTMENT SHALL REVIEW THE COMPONENTS COMMONLY FOUND IN THE WRITTEN GUIDELINES FOR PRACTICE FILED WITH THE DEPARTMENT AND SHALL ALSO ESTABLISH A SURVEY FORM, WHICH SHALL BE MADE AVAILABLE TO PHYSICIANS AND NURSE PRACTITIONERS LICENSED IN THE STATE, IN ORDER TO SOLICIT COMMENTS REGARDING THE PRACTICAL IMPLEMENTATION AND FUNCTIONALITY OF COLLABORATIVE AGREEMENTS BETWEEN NURSE PRACTITIONERS AND COLLABORATIVE RELATIONSHIPS BETWEEN A NURSE PRACTITIONER AND A PHYSICIAN AND THE IMPACT OF SUCH AGREEMENTS AND RELATIONSHIPS TO THE PROVISION OF HEALTH CARE SERVICES WITHIN THE STATE. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, SHALL ISSUE A REPORT THAT SUMMARIZES THE COMPONENTS COMMONLY FOUND IN THE WRITTEN GUIDELINES FOR PRACTICE AND THE COMMENTS RECEIVED RELATING TO COLLABORATIVE AGREEMENTS AND COLLABORATIVE RELATIONSHIPS ALONG WITH INFORMATION THAT INCLUDES, BUT IS NOT LIMITED TO: THE NUMBER OF NURSE PRACTITIONERS PRACTICING FOR FEWER THAN THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS THAT PRACTICE PURSUANT TO A COLLABORATIVE AGREEMENT WITH A PHYSICIAN; THE NUMBER OF NURSE PRACTITIONERS PRACTICING FOR FEWER THAN THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS THAT PRACTICE PURSUANT TO A COLLABORATIVE AGREEMENT WITH A NURSE PRACTITIONER FOR SIX MONTHS AND THE NUMBER OF THESE NURSE PRACTITIONERS THAT EXTEND A COLLABORATIVE AGREEMENT FOR AN ADDITIONAL SIX MONTHS UPON A SHOWING OF GOOD CAUSE SUBJECT TO THE APPROVAL OF THE DEPARTMENT; THE NUMBER OF NURSE PRACTITIONERS PRACTICING FOR MORE THAN THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS THAT PRACTICE PURSUANT TO A COLLABORATIVE RELATIONSHIP WITH A PHYSICIAN; OTHER INFORMATION THE DEPARTMENT DEEMS RELEVANT, INCLUDING BUT NOT LIMITED TO, ANY RECOMMENDATIONS FOR THE CONTINUATION OR AMENDMENTS TO THE PROVISIONS OF THIS SECTION RELATING TO COLLABORATIVE AGREEMENTS OR COLLABORATIVE RELATIONSHIPS. THE COMMISSIONER SHALL SUBMIT THIS REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE CHAIRS OF THE ASSEMBLY AND SENATE HIGHER EDUCATION COMMITTEES BY SEPTEMBER FIRST, TWO THOUSAND SIXTEEN.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall expire June 30, 2018 when upon such date the provisions of this act shall be deemed repealed; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.